IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

CRL.A.No. 1177 of 2002()

CC.252/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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APPELLANT: COMPLAINANT:

PRAMUGA KURIES & LOANS (P) LTD.,
KURUPPARAM ROAD, THRISSUR, REPRESENTED BY
ITS CHAIRMAN, ANTHONY, S/O. VARU,
KURIACHIRA DESOM, PIYARAM VILLAGE,
THRISSUR TALUK.

BY ADV. SRI.S.V.BALAKRISHNA IYER (SR.)

RESPONDENTS: ACCUSED:

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1. K. RAVEENDRAN, S/O. KUNJIKUTTAN,
MELESAMANGALAM, THIRUVILWAMALA VILLAGE,
THALAPPILLY TALUK.

2. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY ADV. SRI.DINESH MATHEW J.MURICKEN
BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.1177 of 2002

Dated this the 24th day of October, 2007

JUDGMENT

The appellant is the complainant in C.C.No.252/2000 in the file of Judicial First Class Magistrate Court-I , Thrissur with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted.

2. It is the case of the complainant, the power of attorney holder of a chitty company, that the accused who was a subscriber to the kuri had priced the kuri and received the amount and failed to pay the instalments due and towards discharge of the above liability for Rs.57,330/- the accused issued the impugned cheque dated 28.7.1999 which when presented got dishonoured for want of funds in the account of the accused. The lawyer notice demanding payment was issued. No reply was received. No amount was repaid.

3. The evidence adduced in the matter consisted of the testimony of PW1 and Exts. P1 to P7.

4. The court below found that PW1 is incompetent to

institute the proceedings and to testify and that Ext. P7, the power of attorney would show that the Chairman is a delegate of the company and hence he could not further delegate the authority to PW1. It was also held that the complainant has not produced the documents in support to show that the amount due is the amount mentioned in the cheque.

5. I find that the finding that the power of attorney is not competent to institute the proceedings cannot be upheld especially in view of the fact that the proceedings are criminal in nature. The proposition that the dishonour of the cheque issued in favour of the company the complaint can be filed by the Manager, Director, Partner or any person authorised by the company is supported by authority. (M/s.Gopalakrishna Trading Company vs. D.Bhaskaran (1992(3) Crimes 1094). It has also come out in evidence that PW1 is the litigation clerk of the company and is fully aware of the transactions and he has stated that towards the discharge of the existing liability the accused came to the chitty company and gave the cheque for the above amount. The questions in the cross examination is to the effect that the relevant documents are not produced. The finding of

the court below that execution is not proved cannot be sustained as PW1 has specifically stated that the accused came to the company and handed over the cheque. It is also to be noted that no defence evidence has been filed to show that no reply has been sent. The statutory presumptions stand unrebutted.

6. In the circumstances, findi.ng of the court below acquitting the accused is set aside. The accused is convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment till the rising of the court and to pay a compensation of Rs.57,330/- to the complainant and in default, to undergo simple imprisonment for three months.

The criminal appeal is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

csl